

DIVORCE - MILITARY PENSIONS & BENEFITS



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA
Legal Assistance & Preventive
Law
Pamphlet Series

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DIVORCE - MILITARY PENSIONS & BENEFITS

Uniformed Service Former Spouses' Protection Act (USFSPA) gives spouses of military members certain rights and benefits after dissolution or divorce. There are two main parts of this law:

- 1) The former military spouse's ability to receive a portion of the military member's retired pay; and
- 2) The former spouse's right to receive commissary, Base Exchange, and medical benefits.

FORMER SPOUSE'S SHARE OF RETIRED PAY

Under the USFSPA, a court may divide military retirement pay. A court has proper jurisdiction to divide retirement pay by the member's: (1) residence in the state, other than because of military assignment; (2) domicile in the state; or (3) consent.

The formula for computing the non-military spouse's presumptive portion of the pension is:

$$\begin{array}{c} \text{(Years of Marriage During Service)} \\ \div \\ \text{(Years of Service X 2)} \\ = \\ \text{Presumptive Percentage} \end{array}$$

For instance, SMSgt Mary and Mr. Joe are married for 14 years while SMSgt Mary is in the military. If SMSgt Mary serves 20 years, Mr. Joe will likely get 35% of her retirement, if he has none of his own. This is just a presumptive

amount. The court will adjust the percentage for any retirement benefits the non-military spouse has earned in the marriage and for any unequal division of other property. Additionally, these payments are not terminated by the non-military spouse's remarriage.

DIRECT PAYMENT TO A FORMER SPOUSE

If a court awards a division of retired pay, the former spouse may be able to receive the payment directly from the military pay center. Direct payment is available if the military member and former spouse were married for at least ten years during which time the military member performed at least ten years of retirement-creditable service.

Direct payment is limited to fifty percent of the military member's disposable retired pay. "Disposable retired pay" is the total monthly retired pay to which a member is entitled less disability pay, federal debts, and Survivor Benefit Plan (SBP) annuity premium payments, if the former spouse is going to receive the SBP annuity. The court is not limited to awarding fifty percent, but any portion of an award exceeding fifty percent must be paid by the military member and cannot be made through a direct payment.

A certified copy of the court order dividing the retired pay is necessary to receive direct payment. To obtain direct payments, the former spouse must send by certified mail, return receipt requested, a copy of the divorce decree (or other court order which divides the retired pay) to:

DFAS, P.O. 998002, Cleveland, OH
44199-2087

(800) 321-1080 or (216) 522-5301, fax
(800) 469-6559.

If the submission is not in the proper form, DFAS will return it with instructions. If it is in the proper form DFAS will send the former spouse a DD Form 2293, Request for Former Spouse Payments from Retired Pay, to be completed and returned to DFAS.

COMMISSARY & EXCHANGE BENEFITS

Former spouses are entitled to commissary and BX privileges if the spouse has not remarried and the 20/20/20 rule is applicable. The privileges can be regained upon divorce of the remarriage.

The 20/20/20 rule is satisfied if:

- The former spouse and military member were married for at least 20 years;
- The member performed at least 20 years of retirement creditable service; and
- At least 20 years of retirement service occurred while the couple was married. (The marriage and the member's retirement creditable service overlap by at least 20 years).

MEDICAL BENEFITS

Former spouses are eligible for space available medical care if they:

- Remain unmarried (if new marriage is annulled, benefits can be restarted);
- Are not covered by an employer-sponsored health care plan; and
- Meet the requirements of the 20/20/20 rule outlined above. (If divorced prior to 1 April

1985 check with an attorney to see whether the 20/20/15 rule applies).

This pamphlet is for basic information on adoption as it relates to military pensions and divorce for members stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.



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